IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 4805 of 2002
Date of Decision: 26.7.2007

Hari Chand ...Appellant

Versus

Madan Mohan and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Harsh Aggarwal, Advocate, for the appellant.

Shri Amit Jain, Advocate, for the respondents.

HEMANT GUPTA, J.

Defendant No.2 -Hari Chand is in the second appeal aggrieved against the judgment and decree passed by the learned first appellate Court.

It is the case of the plaintiff that Ram Lubhai entered into an agreement of sale of the shops in dispute on 15.9.1992 and received Rs.10,000/- as the earnest money. The balance sale consideration of Rs.60,000/- was to be paid at the time of execution and registration of the sale deed for which the date fixed was 15.12.1992. But before the date fixed for execution of the sale deed, defendant No. 1 executed a registered sale deed in favour of defendant Nos. 2 and 3 on 23.9.1992. Therefore, the present suit was filed to seek specific performance of the agreement to sell dated 15.9.1992 directing defendant No. 1 to execute and get the sale deed registered.

Defendant No. 1 in her written statement pleaded that earlier she agreed to sell the property in dispute to defendant Nos.2 and

3 on 5.9.1992 but on the representation of the plaintiff that he would settle the matter with defendant Nos. 2 and 3, she signed the agreement in question in favour of the plaintiffs and that she is ready to refund the earnest money of Rs.10,000/- received by her. On the other hand, defendant Nos. 2 and 3 pleaded that the suit had been filed in collusion with defendant No.1 and the agreement relied upon by the plaintiff is forged and fabricated. It was further pleaded that the sale deed dated 23.9.1992 had been validly executed in their favour.

Learned trial Court found that the agreement dated 15.9.1992 stands proved to be executed but since the sale in favour of the present appellant is bona-fide, therefore, it granted a decree for recovery of the earnest money of Rs.10,000/-. However, the first Appellate Court reversed the finding and found that agreement dated 5.9.1992 Exhibit D.1 was prepared subsequent to the agreement in favour of the plaintiff and therefore, it came to the conclusion that the sale in favour of defendant Nos. 2 and 3 cannot be protected. It is also found that agreement Exhibit D.1 dated 5.9.1992 has not been scribed by a regular deed writer. The statements of DW-4 Vijay Kumar, defendant and that of DW-5 Prithi Chand, scribe of the document Exhibit D.1 dated 5.9.1992, were found to be contradictory. It was further found that the testimony of stamp vendor PW-7 Sham Singh (wrongly mentioned as Sadhu Singh, in the judgment) shows serious discrepancy in the stock of stamp papers with him on 4.9.1992 to 5.9.1992. It was found that the entry of purchase of stamp paper for the purposes of agreement of sale is the first entry at 110 page of the register and there is no other entry on 5.9.1992 and on 6.9.1992. The next entry is of 7.9.1992. The first appellate Court also found that the power of

attorney dated 18.9.1992 is registered at Sunam, but there is no mention of the agreement dated 5.9.1992 in the said attorney. A copy of the agreement/acknowledgment dated 18.9.1992 Exhibit PW10/B, executed at Sunam between Ram Lubhai and Vijay Kumar, in token of having received Rs.88,000/- has been produced but even in this receipt, there is no reference of any other agreement. It was found that existence of agreement dated 5.9.1992 was not mentioned in the documents Exhibit PW10/B and Exhibit PW5/A when Ram Lubhai has executed power of attorney in favour of Prithi Chand. Thus, agreement dated 5.9.1992 was prepared at the time of getting the sale deed dated 23.9.1992 executed and registered in the office of Sub Registrar, Hoshiarpur.

In the present second appeal, learned counsel for the appellant has vehemently argued that defendant Nos. 2 and 3 have proved execution of the agreement of sale dated 5.9.1992, which is evident from the testimony of the attesting witnesses. It is contended that it is not necessary that an agreement has to be scribed by a regular deed writer. In the sale deed dated 23.9.1992, it is clearly recited that such sale is in furtherance of agreement of sale dated 5.9.1992. Thus, the findings recorded by the Courts below are not sustainable.

Having heard learned counsel for the appellant at some length, I do not find any merit in the arguments raised by the learned counsel for the appellant. Ram Lubhai, the vendor, has executed a power of attorney on 18.9.1992 in favour of Prithi Chand at Sunam. Prithi Chand is none else but brother of Vijay Kumar, defendant No.3, the purchaser. The said Prithi Chand is the scribe of the agreement dated 5.9.1992, but there is no mention of the agreement dated 5.9.1992 in the power of attorney dated

18.9.1992. Still further, as per the receipt dated 18.9.1992 Exhibit P10/B, a sum of Rs.88,000/- has been paid to Smt. Ram Lubhai. But again in the said document, there is no reference of agreement of sale dated 5.9.1992. Therefore, the fact that there was no reference of agreement in the document executed on 18.9.1992 shows that agreement has been introduced subsequently so as to defeat the claim of the plaintiff. It may be noticed that the record of the stamp vendor from whom the stamp paper was purchased for the agreement dated 5.9.1992, has been considered in detail by the first Appellate Court and it was found that the record of the stamp vendor is not only discrepant but also untrustworthy. Therefore, the finding recorded by the learned first Appellate Court that the agreement dated 5.9.1992 has been prepared at the time of the execution of the sale deed on 23.9.1992, cannot be said to be suffering from any patent illegality or irregularity, which may give rise to any substantial question of law in the present appeal. Such finding has been returned on the basis of appreciation of evidence. It could not be pointed out that any evidence has been misread or not taken into consideration. Consequently, I do not find any ground to interfere in the present second appeal. Hence, the same is dismissed.

However, it shall be open to defendant Nos. 2 and 3 to take recourse to the proceedings to recover the sale consideration purportedly passed to Ram Lubhai, defendant No.1, in appropriate proceedings, in accordance with law.

26-07-2007 (HEMANT GUPTA)
ritu/ds JUDGE